

CONCISE EXPLANATORY STATEMENT

New WAC 180-19-060, 180-19-070, 180-19-080, 180-19-090 and 180-19-200.

This document has been prepared in compliance with RCW 34.05.325, the concise explanatory statement requirement of the Administrative Procedure Act. Included are: (1) The reasons for adopting the rules; (2) A description of any differences between the text of the proposed rules as published in the Register and the text of the final rules, and (3) A summary of all comments received, and (4) Responses to the comments by subject matter.

1. Reasons for Adopting the Rules

The State Board of Education has identified eight sections of Initiative Measure No. 1240 (Charter Schools), approved by the voters in the November 2012 General Election, as requiring rule-making by the agency. Provisions of the initiative are codified in the Common School title as 28A.710 RCW. The SBE adopted rules to 28A.710.090 (Charter school authorizers – Approval process) on February 26, 2013. The subject of this concise explanatory statement is adoption of rules on May 9, 2013 to three additional sections of the law, RCW 28A.710.110 (Authorizer oversight fee – Establishment – Use), RCW 28A.710.140 (Charter applications – Submission – Approval or Denial), and RCW 28A.710.150 (Maximum number of charter schools – Process – Certification – Lottery).

RCW 28A.710.110 requires the State Board of Education to establish a statewide formula for an authorizer oversight fee, applying to both school districts approved as authorizers under RCW 28A.710.090 and the Washington Charter School Commission, which shall be calculated as a percentage of the state operating funding to each charter school. The section limits the fee to no more than four percent of the state funding allocation to the charter school. It also authorizes the SBE to establish a sliding scale for the fee, with the funding percentage decreasing after the authorizer has reached thresholds of authorizing activity.

RCW 28A.710.140 requires the State Board of Education to establish an annual statewide timeline for charter application submission and denial, which must be followed by all authorizers. The timeline must include the date by which each authorizer must annually issue and broadly publicize a request for proposals for charter school applicants under RCW 28A.710.130, and the last date for each year by which the authorizer must submit a report to the applicant and the SBE under RCW 28A.710.150 on an action to approve or deny a charter application.

RCW 28A.710.150 provides that when the State Board of Education receives simultaneous notification from authorizers of approved charters that exceed the annual allowable limits on the number of charter schools that may be established under this section, the SBE must select approved charters for certification through a lottery process, and must assign implementation dates accordingly. Rules are needed to define “simultaneous” for implementation of this provision, and to set procedures for the use of a lottery when the number of charter approvals exceeds the number that may be certified for implementation.

2. Differences between Proposed and Final Rules

There are three differences between the proposed and final rules:

- 1) In proposed WAC 180-19-080(1), the final rules add a requirement that a nonprofit applicant must submit a nonbinding notice of intent to be approved as a proposed charter school not less than thirty days before the last date for submission of an application to an authorizer. The final rule further provides an applicant may not file a charter school application in a calendar year unless it has provided timely notice of intent as provided in this subsection.

- 2) In proposed WAC 180-19-080(2), the final rules change from January 22, 2014 to February 24, 2014 the date by which an authorizer must either approve or deny a charter application received in 2013.
- 3) In proposed WAC 180-19-080(3), the final rules change from February 1, 2014 to March 6, 2014 the date by which the authorizer must provide a written report to the SBE of approval or denial of a charter application received in 2013.

3. Summary of All Comments and Responses

The State Board of Education received two written comments on proposed WACs 180-19-060 through 180-19-200. One person submitted oral testimony at the public hearing held on the rules, in accordance with RCW 34.05.325, at the State Board's meeting on May 9. The comments concerned the adequacy of the timeline for charter applications in the first year of anticipated applications, the use of a sliding scale for the authorizer oversight fee, based on the number of charters authorized, and the procedures for use of a lottery when the number of approved charters exceeds the number that can be certified for implementation under the law.

The comments are categorized as follows, with SBE response:

Comment	Response
The provision for a sliding-scale authorizer oversight fee, in which the fee would be reduced from four percent to three percent after an authorizer has authorized ten charter schools, would result in a significant decrease in the amount of funds available for charter school oversight that would not be offset by economies of scale. It may also create a disincentive for an authorizer to authorize more than ten schools. Even the statutory maximum fee of four percent may not be adequate to support the costs of quality authorizing. The sliding-scale fee in the proposed rules should be removed, and all authorizers funded, without	<p>The SBE recognizes the importance of adequate funding to charter authorizing. In materials prepared for its March 2013 meeting, the Board cited the statement of the National Association of Charter School Authorizer (NACSA) that "Ensuring that authorizing agencies have sufficient funding to execute their duties professionally is essential for quality authorizing and quality charter schools. State charter school policy should provide for adequate authorizer funding as an essential element of charter school infrastructure."</p> <p>The use of a sliding scale for the authorizer oversight fee was explicitly authorized in Section 211(2) of Initiative 1240. It is a recommended option on the parts of both the National Alliance for Public Charter Schools and the National Association of Charter School Authorizers, which had leading roles in the development of the model charter school legislation that formed the template for the voter initiative. "In determining the specified fee, state policy should set a percentage that is sufficient to enable authorizers to carry out their responsibilities effectively while taking into account the various circumstances in which authorizers may require more or less funding. States should, for example, consider capping the total amount of funding available to an authorizer or reducing the percentage of the fee that authorizers are paid once a certain threshold is reached." (NACSA, <i>Charter School Authorizer Funding</i>, July 2009, p. 4.) "[O]nce a charter school has chartered schools for a few years and oversees a 'critical mass' of charters, it might be able to continue authorizing effectively with a lower-percentage fee (because it is beyond start-up and also may have achieved some economies of scale) until the point where the number of schools it authorizes increases costs on a per-school basis. Such a determination should be made by the state's designated authorizer oversight body based on several consecutive years of financial data . . ." (National Alliance, <i>A New Model Law for Supporting the Growth of High-Quality Public Charter Schools</i>, 2009, p. 12.)</p> <p>The SBE believes there are economies of scale that are attainable for large authorizers. It also notes that the Washington Charter School Commission will also have state general fund support for carrying out its duties as an authorizer, while under current law school district authorizers will have no specific funding to augment the oversight fee.</p>

	<p>At the same time, the SBE has recognized in rule a continuing need to examine the authorizer oversight fee in operation, and to make whatever changes may be supported by data on authorizer resources and expenditures. WAC 180-19-060(2) requires the Board to periodically review the adequacy and efficiency of the authorizer fee to determine whether the formula established in this section should be adjusted in order to ensure the purposes of the charter school law are fulfilled. In this review it will utilize the information on authorizers' operating costs and expenses that are required to be reported to the SBE by each authorizer under RCW 28A.710.100(4)(d). The annual report on charter schools required to be submitted by the SBE, in collaboration with the Commission, to the legislature, the governor and the public under RCW 28A.710.250(2) also must include within its scope the efficacy of the formula for authorizer funding.</p> <p>The Board therefore declined to make the suggested change to the rules, observing that there will be ample opportunity to make such a change in the future should it be found needed.</p>
<p>The proposed 60-day period for approval or denial of charter applications received in 2013 does not permit sufficient time for the thorough review and evaluation of applications needed to ensure high-quality outcomes. The requirement of RCW 28A.710.140(2) that the application provide opportunity for a public forum for each local community to learn about and provide input on each application works a particular hardship on the Commission, which unlike school district authorizers will need to convene such meetings in locations across the state. In order to give sufficient time to authorizers, the date by which decisions must be made on applications received in 2013 should be extended by a month from January 22, 2014 to February 24, 2014. The last date for authorizers to provide a written report of an action to approve or deny applications should be extended correspondingly.</p>	<p>The Board adopted this suggested change, while expressing concern about the reduced time between charter approvals and potential openings of charter schools in fall 2014.</p>
<p>The timeline for charter applications should include a date by which applicants must file a notice of intent to submit an application, so that authorizers have the ability to allocate appropriate time and resources to the review process.</p>	<p>The Board adopted this suggested change.</p>
<p>The use of a lottery to select approved charters for implementation when the SBE receives simultaneous notification of charter approvals that would cause the annual allowable to be exceeded should be clarified to address a circumstance in which an approved charter school does not execute a charter contract within the required 90 days or delays its opening for one school year under agreement with the authorizer.</p> <p>The lottery should be conducted in two stages, the second including any authorizer-approved charter schools that have not executed a charter contract within 90 days or elects to defer its opening date by one year.</p>	<p>No charter school may commence operations without a charter contract, and the charter contract must be executed within 90 days. Therefore it seems unnecessary to include a charter school in the situation described within a lottery under 28A.710.050(3).</p> <p>A response to the second comment turns on the meaning of "established" in subsection (1) of this section and of "implementation" in subsection (3). In the SBE's reading of this section, "implementation" of a charter has no necessary implications for the date on which the school established under it would be open and operating. A charter may be implemented with a plan to delay its opening for a school year in accordance with RCW 28A.710.160(5). The SBE therefore does not find that the text and intent of this section require a two-stage lottery that distinguishes between approved charters by intended dates of school operation.</p>